

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL MINUTES

March 29, 2012

The meeting of the Arizona Prosecuting Attorneys' Advisory Council was called to order by the Chair, Sheila Polk, on Thursday, March 29, 2012, at 9:00 a.m., at the APAAC Office which is located at 1951 W. Camelback Road, Suite 202, in Phoenix.

COUNCIL MEMBERS PRESENT

Ed Rheinheimer	Cochise County Attorney (telephonic)
Derek Rapier	Greenlee County Attorney
Sam Vederman	La Paz County Attorney (telephonic)
William Montgomery	Maricopa County Attorney
Matt Smith	Mohave County Attorney (telephonic)
Brad Carlyon	Navajo County Attorney
James Walsh	Pinal County Attorney (telephonic)
Sheila Polk	Yavapai County Attorney
Jon Smith	Yuma County Attorney (telephonic)
Tom Horne	Arizona Attorney General
Jon Eliason	Mesa City Prosecutor
Baird Greene	Tucson City Prosecutor (telephonic)
Tobin Sidles	Oro Valley Town Prosecutor

PROXIES

Daisy Flores	Gila County Attorney
	Proxy Derek Rapier
Barbara LaWall	Pima County Attorney
	Proxy Kathleen Mayer
George Silva	Santa Cruz County Attorney
	Proxy Liliana Ortega
Tom Horne	Arizona Attorney General
	Proxy Andrew Pacheco
David Byers	Arizona Supreme Court (telephonic)
	Proxy Jerry Landau
Aaron Carreon-Ainsa	Phoenix City Prosecutor
	Proxy Vickie Hill/Jessica Breedlove

STAFF PRESENT

Elizabeth Ortiz	Executive Director
Kimberly MacEachern	Staff Attorney
Denise Helm	Executive Assistant

VISITORS

Kent Cattani	Chief Counsel, Attorney General's Office
Lt. Col. Cluff	Staff Judge Advocate, Luke Air Force Base

CONSENT AGENDA

Mr. Montgomery made a motion, seconded by Mr. Rapier, to approve the Consent Agenda. Motion carried.

CHAIR'S REPORT

Ms. Polk recognized Mr. Horne who wished to thank Ms. MacEachern for providing him an excellent memorandum to prepare his comments at a recent press conference called by Sen. Linda Gray on the proposed pharmacy board legislation. Ms. MacEachern acknowledged the efforts of legislative extern, John Gaylord on that memo.

Ms. Polk reported on the March 14, 2012, American Jewish Committee luncheon honoring three attorneys in the state with the Judge Learned Hand Award. Ms. LaWall was one of the award recipients and gave a very moving speech about her passion for being a prosecutor.

Ms. Polk stated that the NACo (National Association of County Officials) legislative conference in Washington DC was March 5-7, 2012. Council members Mr. Rapier, Mr. Carlyon, and Ms. Polk, in addition to Ms. Ortiz, were among the 2,000+ attendees. The conference content was applicable and appropriate for not just prosecutors, but county government officials, as well. The Arizona contingent had the opportunity to meet and discuss issues with Sen. McCain and Sen. Kyl, as well as make individual visits on Capitol Hill. Ms. Polk stated that NACo can assist prosecutors in having a voice on the national level.

Mr. Rapier commented that one of NACo's more active committees is the Justice and Public Safety committee, which also has a subcommittee dealing specifically with prosecution and law enforcement issues, etc. A larger presence in NACo by the prosecution community would positively impact some of the policies being considered by these committees.

Mr. Rapier reported that NACo has an "eight-two" rule, meaning that no more than eight people from one state, and no more than two from one county, may serve on a committee.

Mr. Carlyon noted that AACo (Arizona Association of County Officials), the state organization, makes the nominations for Arizona, and, as their third Vice President, any Councilmember interested in pursuing a committee can contact him. Mr. Carlyon also related that the Arizona contingent visited NDAA office in Virginia during the NACo conference. He recommends that NDAA get involved in NACo to help organize the prosecution communities in every state for a stronger voice.

Ms. Polk continued her report on the NACo conference visit, stating that Mr. Carlyon was the Arizona delegate to lay a wreath at the Tomb of the Unknown Soldier at Arlington National Cemetery. Additionally, the Arizona contingent toured the NDAA offices where they met Executive Director, Scott Burns, and also Jason Baker, the NDAA liaison with Congress.

Ms. Polk discussed how the Executive Committee approved changing the venue for one Council meeting each year to give Council members the opportunity to visit other counties and their respective offices. Ms. Polk announced that Mr. Carlyon will host the Council meeting scheduled for June 29, 2012.

Mr. Carlyon stated the Council meeting will be held at the South County Complex in Show Low, rather than the Navajo County seat of Holbrook. He will host a dinner at his residence and organize a tour of Fort Apache for Council members and their families. The Navajo Chamber of Commerce will mail

information to Council members in the next few weeks. Ms. Ortiz will provide Council members with information on local hotel accommodations.

Ms. Polk stated the Executive Committee also decided that a tour of the DEA facility in Tucson, hosted by Ms. LaWall, be offered in conjunction with the Council meeting on July 31, 2012. Ms. Polk acknowledged there was enough interest from Council members to proceed with scheduling this event. Ms. Ortiz will coordinate the DEA tour so that it does not conflict with other scheduled events related to the Summer Conference which starts on August 1, 2012, specifically those events involving Council members or their chief deputies.

EXECUTIVE DIRECTOR'S REPORT

Ms. Ortiz confirmed the recent launch of APAAC's redesigned website and provided Council members a virtual walk-through. Ms. Ortiz requested Council members send in any pictures they have taken which are pertinent to APAAC for inclusion on the website. APAAC photos will rotate on the home page and be changed out frequently to keep the website fresh and current. This webpage will continue to evolve so that it stays relevant regarding news, awards, research, training schedules and meeting calendars. Ms. Ortiz gave an overview of the "Event Calendar" viewing options; she will determine if these events can be downloaded into an Outlook calendar. The "Awards" page on the website will recognize recipients of awards and honors in the prosecution community, in addition to offering forms to nominate individuals for upcoming commendations. Council members are encouraged to share their own office's awards for posting, as well. There is also a social media connection on the website to find APAAC on Facebook and Twitter. Ms. Ortiz invited Council members to provide updates to their bios or photos for the "APAAC Council" page. Prosecution offices may also post open job positions on the website's "Employment" page; however, it is the responsibility of the hiring office to let APAAC know when the position is filled so the posting can be removed.

Ms. Ortiz reported that she is waiting to hear back from the Arizona Historical Advisory Council regarding APAAC's Centennial Legacy Project. APAAC's proposed project consists of framed prints with plaques depicting each of the original County courthouse buildings for each of the fifteen counties in Arizona. Ms. Ortiz also reported that there are several ideas being implemented to tie the Arizona Centennial with the 2012 Summer Conference, ranging from the conference gift to the awards ceremony lunch menu.

STAFF ATTORNEY'S REPORT

Ms. MacEachern is on the planning committee for the Problem Solving Courts conference on May 15th and 16th in Phoenix. She is excited to have two presentations from the prosecuting community on this year's agenda: Mr. Carlyon and Navajo County Sheriff Clark will talk about chronic public intoxication and options for dealing with it; and a team from the City of Phoenix will speak on accessing community resources to increase success in misdemeanor prosecution. Coconino County Attorney, Mr. Rozema, will join Chief Justice Berch and others in making opening comments for the conference, which is a first for the prosecution community. The conference is a two-day event with a lot of interesting breakout topics that may be of interest to prosecutors. Ms. MacEachern encouraged everyone to attend. APAAC will send formal announcements about the conference with registration information.

Ms. MacEachern advised Council members that Mr. Montgomery will be speaking on Specialty Problem Solving Courts, CPS reform and Criminal Justice at the Maricopa County Bar Association, 303 East Palm Lane, from noon to 1:30 p.m. on April 24th. Ms. MacEachern will send the related flyers for both events to Council members.

Ms. MacEachern spoke about a recent meeting with the Arizona Chamber of Commerce to discuss how APAAC could get the community more engaged in the topic of Criminal Justice, especially with regard to APAAC's recent report on prisoners, so that people are better informed and can communicate more effectively with their legislators when policy discussions take place. Ms. MacEachern, Mr. Montgomery and Dan Seiden met with Steve Twist, Chamber member and Glen Hamer, Chamber Director, as well as the Chamber President, and decided to put together a group called Business People for Public Safety. This group will look for ways to network with the business community and provide them with educational programs about the criminal justice system from the prosecution community. Public safety is a prime component of a healthy business climate; hence this is a relevant topic for that group. APAAC may call on Council members for assistance with these programs.

Mr. Montgomery stated that it would be helpful to potentially link up local community stakeholders across the state with their respective county attorney's office to partner in some of these efforts.

PUBLIC INTEGRITY TASK FORCE

Ms. Polk introduced the Public Integrity Task Force resolution dated November 18, 1992, for Council review to determine if any action is indicated. Discussion was held.

A motion was made by Mr. Pacheco, seconded by Mr. Sidles, to create a working group consisting of Council members and staff to determine whether or not the previous resolution is workable and appropriate and then make a recommendation to the Council. Motion carried.

The following Council members volunteered to be on this committee: Jon Smith, Andrew Pacheco, Jon Eliason, Aaron Carreon-Ainsa, Sheila Polk and Jim Walsh.

PROPOSED ARIZONA PROSECUTOR RISING STAR AWARD

Based upon Ms. LaWall's suggestion from a previous Council meeting to consider a new "Rising Star" award for the 2012 Summer Conference, Ms. Ortiz presented a draft nomination form and award criteria. Discussion was held on the merits of the award and the qualifying criteria.

Mr. Montgomery made a motion, seconded by Mr. Pacheco, to establish this award for the 2012 Summer Conference. The award language was changed to include all full-time prosecutors with three years' maximum experience. Discussion was held. Motion carried.

RULES COMMITTEE UPDATE

Ms. Ortega discussed the Rules Committee's recommendations for APAAC positions on pending petitions for modifications to AZ Supreme Court Rules. Ms. Ortega affirmed that the Rules Committee's concerns regarding Ethics Rule 3.8 comport with the report created by the State Bar's Criminal Practice and Procedure Committee (agenda attachment). Discussion was held.

Mr. Montgomery made a motion, seconded by Mr. Eliason, to have the committee draft a comment for APAAC to adopt and approve at the May 11th Council meeting. Motion carried.

Ms. Ortega addressed an amendment to Criminal Rule 12.9, which gives a deadline for a defendant to file a motion for remand to the grand jury after the defendant has won an appeal, which resulted in a conviction being reversed and the case is set for a new trial. Discussion was held.

Mr. Sidles made a motion, seconded by Mr. Rapier, to add to the Rules Committee draft comments in support of the amendment to Rule 12.9 that it is limited to where a case is reversed based on a substantive change in the law. These draft comments will be submitted to the full Council prior to the May 11, 2012, Council meeting for their consideration. Discussion was held. Motion carried.

Ms. MacEachern stated that the Rules Committee over the signature of Mr. Silva recently filed a notice with the State Bar addressing proposed changes to jury instructions, which incorporated recommendations drafted by the Maricopa County Attorney's Office as those of the Rules Committee.

Mr. Cattani stated that prosecutors are underrepresented on the State Bar's Criminal Practice and Procedure Committee and are being outvoted on committee matters. There is another meeting of that committee on March 20, 2012, and he will speak with the current sitting prosecutors to determine a course of action to rectify that situation.

TRAINING COMMITTEE REPORT

Mr. Sidles reminded Council members of upcoming APAAC seminars: the last Criminal Year in Review is on March 30, 2012; spring Professionalism Course is April 20, 2012; Ethics is on June 8, 2012; and the Felony Intermediate Advocacy course is June 18-20, 2012 in Prescott. Additional seminar items are found in the agenda handout provided.

LEGISLATIVE POLICY COMMITTEE REPORT

Mr. Walsh gave the Legislative Policy Committee report and presented two bills from committee for the vote of the Council: HB 2160 and HB2341.

Mr. Walsh made a motion, seconded by Mr. Sidles, to oppose HB2160. Discussion was held. Motion carried.

Mr. Walsh made a motion, seconded by Mr. Montgomery, that the Council monitor HB2341. Discussion was held. Motion carried.

Ms. MacEachern gave the Council a general update on the bills that the Committee continues to track; specifically, HB2349, HB2388 and the competing House and Senate proposals in response to Caylee's law.

The Council also indicated a preference for the bill tracking form as the weekly reporting format.

NDAA REPORT

Mr. Walsh stated that 27 senators had signed on a request letter to support continued funding of the John R. Justice grant program. NDAA is also pushing hard in the Appropriations Committee on behalf of the Victims of Child Abuse Act and the two Byrnes Competitive Grant programs, which allow NDAA to continue their educational programs around the country. This is the grant that funds multi-jurisdictional drug task forces. Mr. Walsh reported that a recent vote in the House defeated reauthorization of the Violence Against Women Act as the result of a political procedural matter; however, the bill may not be dead. Another NDAA matter concerns a forensic science reform bill in the Senate Commerce Committee which would assign a lot of forensic regulations to the Federal Department of Commerce; the bill is changing as it continues through committee. Lastly, there is an attempt to revive the Webb Commission bill that NDAA opposed as overly ambitious and lacking prosecutor input. Prosecutors can contact NDAA delegates directly to provide feedback on these

matters. Mr. Walsh will send copies of these bills, as well as updates, to APAAC for email distribution to Council members.

ROUNDTABLE DISCUSSION

Ms. Polk introduced guest speaker, Lt. Col. Cluff, Staff Judge Advocate at Luke Air Force Base, 56th Fighter Wing. Lt. Col. Cluff referred to agenda handouts provided Council for this presentation. He spoke on behalf of JAG prosecutors in Arizona as it concerns the Air Force's criminal justice system for their airmen. The Air Force seeks to maximize their jurisdiction over airmen who get into trouble outside the gates of the base compound. When criminal conduct involving an airman has occurred, Lt. Col. Cluff stated that JAG prosecutors would give a formal letter to the law enforcement agency involved, requesting jurisdiction and providing the range of punishments for the crime and procedures JAG would follow if given jurisdiction.

Some discussion was held concerning the impact giving jurisdiction over to JAG would have on the victim and their rights under the Victim's Bill of Rights, on a federal and state level.

CALL TO THE PUBLIC

Mr. Cattani discussed the recent United States Supreme Court case of *Lafler v. Cooper*, which raises a similar issue to Arizona's *State v. Donald* decision. According to Mr. Cattani, the *Lafler* holding bolstered defendants' rights to effective counsel during the plea bargaining process. Mr. Cattani indicated the current plea colloquy used in Arizona courts may need to be reviewed or revised in light of the *Lafler* case.

Mr. Cattani also reviewed the Supreme Court's recent ruling in *Martinez v. Ryan*. According to Mr. Cattani, the case will primarily have an effect in death penalty cases, whereby the ineffective assistance of post-conviction counsel can be used as cause to overcome a procedural bar, which then opens the issue for litigation in federal court.

Finally, Mr. Cattani commented on a forensic advisory meeting presentation by Lisa Judge from the Tucson Police Department on eyewitness identification procedures and its potential impact on the discussion about jury instructions.

Ms. MacEachern mentioned two field trips for consideration by the Council: Taser International, to see how they make Tasers and see what Tasers can do; and, the Arizona Department of Juvenile Corrections, to tour the facility and see recent changes made to their operation.

NEXT COUNCIL MEETING

The next Council meeting will be held Friday, May 11, 2012, at 10:00 a.m. at the APAAC Office in Phoenix.

ADJOURNMENT

Mr. Montgomery made a motion, seconded by Mr. Sidles, to adjourn the meeting at 11:45 a.m. Motion carried.